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## Memorandum

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September 13, 2021

TO: Water Resources Review Committee

FROM: Alexa Kelly, Research Analyst, 303-866-3469

SUBJECT: Recreational In-Channel Diversion Water Rights

### Summary

This memorandum responds to the committee's request for information on recreational in-channel diversion (RICDs) water rights. The memorandum discusses the definition of RICDs and how a local government applies for a RICD water right.

### Background

Colorado, along with several other states, authorizes the appropriation of water rights for recreational boating purposes within a natural stream. Colorado is the only state that allows for the appropriation of water rights for recreational boating uses associated with man-made whitewater parks. This requires structures in the stream that create recreational experiences. These rights are referred to as "recreational in-channel diversion" water rights or RICDs.

### Defining Recreational In-Channel Diversion

Senate Bill 01-216 established the definition of a RICD water right as the minimum stream flow as it is diverted, captured, controlled, and placed to beneficial use between specific points defined by physical control structures pursuant to an application filed by a local government entity for a reasonable recreation experience in and on the water.<sup>1</sup> "Reasonable recreation experience" is defined in statute as "the use of recreational in-channel diversion for, and limited to, nonmotorized boating."<sup>2</sup>

RICD water rights holders must divert the water through a control structure. The law specifies the requirements for a control structure as a structure consisting of durable materials that has been placed with the intent to divert, capture, possess, and control water in its natural course for an appropriators intended and specified RICD.

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<sup>1</sup> Section 37-92-103(10.3), C.R.S.

<sup>2</sup> Section 37-92-103(10.1), C.R.S.

## Applying for RICD Water Rights

Procedures for a RICD water right application by a local government are established in state statute. Current law requires a county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district, after initiating a water rights filing for the adjudication of a recreational in-channel diversion in any water court, to submit a copy of the application to the Colorado Water Conservation Board (CWCBC) for evaluation.

Colorado law requires the CWCBC to hold a public hearing to evaluate the application. The public meeting must determine whether the proposed RICD will:

- promote the maximum beneficial use of waters of the state;
- not impair Colorado's ability to fully develop and use its compact entitlements; and
- not cause material injury to CWCBC's instream flow water rights.<sup>3</sup>

After the public hearing, the CWCBC must present its findings to the Water Court for consideration.

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<sup>3</sup> Section 37-92-102, C.R.S.